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SUPREME COURT OF THE UNITED STATES.

October Term, 1906.

No. 222.

Office Supreme Court, U. S.
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JAMES H. McKENNEY,
CLERK

WILLIAM MOORE ET ALS., Appellants,

vs.

E. J. McGUIRE ET ALS., Appellees.

BRIEF IN REPLY TO SUPPLEMENTAL BRIEF FOR APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF ARKANSAS.

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In reply to the supplemental brief for appellees filed March 2, after the hearing of the case was begun, we beg leave to make the following brief reply:

Counsel for appellees, for the first time in this case, object to the jurisdiction of the Federal court in this case—

First, because the claim of Appellants as to whether the lands in suit were within the boundary of the original grant, and cite for this position four, cases, to wit:

(*a*) Joy *vs.* City of St. Louis, 122 Fed. Rep., 524. This was an action of ejectment and also decided by Judge Trieber, and the judge in his opinion says: *"The jurisdiction of this court is invoked solely upon the ground that the cause of action is one arising under the laws of the United States."* The learned Judge, decided properly that in that case the court had no jurisdiction, and dismissed the suit.

The case was appealed to the United States Supreme Court—and decided, and inasmuch as the statement of the pleadings and facts in the opinion of the district judge were *very brief* we will not discuss this case further, but refer to the opinion of the Supreme Court in the same case, where the pleadings and facts are fully set out, to wit:

(*b.*) Joy *vs.* City of St. Louis, 201 U. S., 332: From the statement of the pleading in this case it appears that plaintiff's claim was based on a *Spanish concession,* dated in 1799, by *metes and bounds,* and by act of Congress of 1812, which provided for the settling of claims to lands in the Territory of Missouri, the title to *said concession,* survey, confirmation, and outlot was confirmed and granted to Labeaume, pursuant to act of Congress. Letters patent of the United States were issued to Labeaume, which patent was "sufficient to grant to Labeaume, or his representatives, *the premises mentioned in the patent*" (*Id.,* 334).

Plaintiff in his petition did not claim under this proceeding any land lying within the description of either the *Spanish concession* or the United States patent. *That was not in dispute,* and the title thereto *conceded.*

But plaintiff in his petition expressly and *only* sued for certain land which he claimed had *accreted* to the lands originally embraced in the *concession* and *patent* after the date of the same; in other words, it was a controversy *alone* over the *accretions* formed *after* the dates of the *concession* and *patent, and not* about *any* land embraced in the patent or covered by any act of Congress (Treaty, *Id.,* pp. 334, 335).

Justice Peckham, in delivering the opinion of the court, places it upon the ground that plaintiff had not stated any Federal question in his petition, and the court says: "In this case the real dispute, as stated by the plaintiff, is whether plaintiff is entitled to the land formed by *accretion,* which has taken place many years since the patents were issued and since the acts of Congress were passed. There is no

dispute as to the terms of the patent or of the acts of Congress" (*Id.*, p. 342).

The *question of fact* in the case was "whether the land contained in the original patent reached to the Mississippi river as its eastern boundary under the distances called for by the patent. (*Id.*, p. 342.)

The court further said: "Whether the plaintiff is, upon the facts set forth, entitled to the accretion is a question of local or State law, and is not one of a Federal nature." (*Id.*, pp. 342, 343.)

NOTE.—We submit that it is only necessary to turn to the complaint in the case at bar to show that it does not fall within the rule laid down in "Joy *vs.* City of St. Louis."

The case at bar being one of disputed boundary between States, and appellees having denied the title of appellants and disputed the boundary line between the States as claimed by them and denied that the island is in Arkansas, of course that true boundary becomes a mixed question of law and fact to be proven like all State boundary lines, but such facts and proof do not bring the case within the rule invoked by appellees.

(*c*) Filhiol *vs.* Torney, 119 Federal, 974, we submit, has no bearing on the case at bar, under any view of it. It was appealed.

(*d*) Filhiol *vs.* Torney, 194 U. S., 356. This is the same case (119 Fed. Rep., 974) and was an action of *ejectment*. It was evidently decided right, but we insist has no application to the point or any question involved in this case.

Second. That the circuit court had no original jurisdiction of this case as a controversy between citizens of different States claiming title under grants of different States, because none of the parties are citizens of the State of Arkansas, and cites Stephenson *vs.* Fain, 195 U. S., 165, as authority.

In the case above cited we find the facts to be as follows:

(*a*) Complainants in the bill were citizens of the States of New York and Rhode Island and the defendants citizens and residents of the States of North Carolina and Georgia. The suit was brought in the Circuit Court of the United States for the Eastern District of Tennessee *to remove a cloud* upon the title to a body of land lying adjacent to the boundary between Tennessee and North Carolina.

Complainants claim title under grants from the State of Tennessee alleging that the land lay wholly in Tennessee. The defendants claim under grants from the State of North Carolina, and claim that the lands lay wholly in North Carolina.

"The issue involved the true boundary line between North Carolina and Tennessee." The circuit court held that the lands lay in the State of North Carolina, and title was in the defendants, and dismissed the bill. An appeal was taken to the Circuit Court of Appeals, and, on hearing, the decree of the circuit court was affirmed—a decision on the merits. From the decree of the Circuit Court of Appeals the case was appealed to the United States Supreme Court.

NOTE.—As we understand it, the *sole* question involved was as to whether the decree of the *Circuit Court of Appeals* was *final* on the merits or whether an appeal lay from it to the Supreme Court.

The claim of jurisdiction was two fold:

First. To remove a cloud upon the title to the land, *which gave the circuit court original jurisdiction of itself.*

Sec. 738, Rev. Statutes.

Dick *vs.* Foraker, 155 U. S., 404,

Second. A controversy between citizens of different States claiming lands under grants of different States.

The syllabus of the case is as follows: "The circuit courts do not possess original jurisdiction over controversies between citizens of different States claiming lands under grants of different States by reason of the subject-matter, and the decree of a Circuit Court of Appeals in such a case is final, and an appeal to this court does not lie."

The Chief Justice, delivering the opinion of the court, held that, on the last proposition of jurisdiction alone, the circuit courts had no original jurisdiction "by reason of the subject-matter," and that the decree of the Circuit Court of Appeals was *final,* and further held that on said second proposition alone, in order to give the United States Supreme Court jurisdiction, the suit should have been first brought in the State court and brought up by writ of error to the court of last resort of the State (if we understand the opinion), but in that case the circuit court had original jurisdiction, because it was also *"a bill to remove a cloud upon the title to land"* and quiet the title, etc., which is one of the grounds of jurisdiction in the case at bar, among other grounds.

(See *original brief of appellants, pp. 69-70.*)
(Original bill, Record, pp. 1-13.)
(Amended and supplemental bill, Record, p. 37.)
(Waiver of question of jurisdiction, Record, p. 85.)

We submit that if in Stephenson *vs.* Fain, *supra,* the circuit court had dismissed the case on the ground of jurisdiction alone and so certified, the Supreme Court would have taken jurisdiction on appeal; but it was decided on the *merits,* and went up through the Circuit Court of Appeals.

Stephenson *vs.* Fain was decided after the bill in the present case was filed, and the criticism and explanation of Paulet *vs.* Clark and Colson *vs.* Lewis on matters *dehors* the opinions in those cases were not known. But we insist that the jurisdiction of the circuit court and this court is complete on several grounds.

The circuit court also acquired jurisdiction by seizure of the land and placing its receiver in charge.

Cooper *vs.* Reynolds, 10 Wal., 317-318.

Shields *vs.* Coleman 157 U. S., 178; see our original brief, pp. 69-70.

Again, appellants in this case claim under *patents of the United States and acts of Congress.*

Respectfully submitted,

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